

IN THE COURT OF APPEALS OF TENNESSEE  
AT KNOXVILLE

Assigned on Briefs on February 21, 2002

**JOHNNY McGOWAN v. ROBERT GIBSON, et al.**

**Direct Appeal from the Circuit Court for Morgan County  
No. 6167C Hon. Russell Simmons, Jr., Circuit Judge**

**FILED APRIL 15, 2002**

**No. E2001-02455-COA-R3-CV**

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The Trial Court dismissed complaint for the failure of plaintiff, who is incarcerated, to comply with Tenn. Code Ann. §41-21-805. On appeal, we affirm.

**Tenn. R. App. P.3 Appeal as of Right; Judgment of the Circuit Court Affirmed.**

HERSCHEL PICKENS FRANKS, J., delivered the opinion of the court, in which CHARLES D. SUSANO, JR., J., and D. MICHAEL SWINEY, J., joined.

Johnny McGowan, Petros, Tennessee, *pro se*.

Paul G. Summers, Attorney General and Reporter, Michael E. Moore, Solicitor General, and Dawn Jordan, Assistant Attorney General, Nashville, Tennessee, for Appellees.

**OPINION**

This is the second appeal in this action filed *pro se* by Johnny McGowan. McGowan is incarcerated in Brushy Mountain Penitentiary, and brought this action against employees of the Tennessee Department of Corrections, at the Brushy Mountain facility. The initial Complaint was filed in January of 2000, alleging that he had been physically assaulted by defendants, and that he had been charged with disciplinary infractions in retaliation for his filing a grievance regarding the assault. The Trial Court initially granted Summary Judgment pursuant to Tenn. Code Ann. §41-21-806, because the Complaint was not filed within 30 days after the final grievance decision. This Court reversed and remanded, finding the applicable statute of limitations allowed one year, and that the Court could not apply any other statute to shorten the period. *McGowan v. Gibson*, 2000 WL 1721663 (Tenn. Ct. App. Nov. 17, 2000).

Upon plaintiff's Motion the case was transferred to Circuit Court. The Court then entered an Order finding that the plaintiff had failed to comply with Tenn. Code Ann. §41-21-805 in his affidavit. Plaintiff then filed another affidavit, along with a copy of his trust fund statement. Defendants then asserted that plaintiff had not fully complied with the Code requirement, because he had failed to disclose all of his previous lawsuits, and because he had failed to pay court costs from some of the previous suits dismissed as frivolous. Defendant also attached records from the federal court lawsuits which plaintiff failed to disclose.

The Trial Court then dismissed plaintiff's lawsuit without prejudice on the grounds that the supplemental affidavit did not comply with the requirements of the Code, and plaintiff had not paid costs adjudged against him in prior frivolous lawsuits.

The issue raised on appeal is whether the Trial Court erred in dismissing plaintiff's complaint for failure to comply with Tenn. Code Ann. §41-21-805 *et seq.*

Tenn. Code Ann. §41-21-805 deals with the requirements for an affidavit of inability to pay costs filed by an inmate, and states that such an affidavit must contain the following:

- (1) A complete list of every lawsuit or claim previously filed by the inmate, without regard to whether the inmate was incarcerated at the time any claim or action was filed; and
- (2) For each claim or action listed in subsection (a):
  - (A) The operative facts for which relief was sought;
  - (B) The case name, case number and court in which the suit or claim was filed;
  - (C) The legal theory on which the relief sought was based;
  - (D) The identification of each party named in the action; and
  - (E) The final result of the action, including dismissal as frivolous or malicious under this part or otherwise.
- (b) If the affidavit filed under this section states that a previous suit was dismissed as frivolous or malicious, the affidavit must state the date of the final order affirming the dismissal.
- (c) The affidavit must be accompanied by a current certified copy of the inmate's trust account statement.

Plaintiff filed two affidavits during the pendency of this action, but these filings were deficient in that plaintiff failed to list all prior lawsuits, and failed to fully complete the affidavit.

The Trial Court relied upon *Williams v. Bell*, 37 S.W.3d 477 (Tenn. Ct. App. 2000),

to dismiss plaintiff's lawsuit without prejudice. In *Williams*, the inmate (who alleged violations of his civil rights) failed to furnish all of the information regarding his prior lawsuits that is required by the statute, and it was held that the inmate's complaint should be dismissed without prejudice. *Id.* at 480. The Court recognized that Tenn. Code Ann. §41-21-801 *et seq.* "imposes a duty upon inmates who file claims in *forma pauperis* to submit affidavits documenting their prior history of litigation, before a trial court can rule on their current claims. One purpose of the statutory scheme is to bar inmates who have filed malicious or frivolous claims from filing any further lawsuits until they have paid the costs that have accrued from those prior claims." *Id.* at 479. The Court also recognized that the federal statutes imposed similar requirements on inmates filing suit in *forma pauperis* in federal court. *Id.*; see 28 U.S.C. §1915. The *Williams* decision was followed by another decision of this Court, *Brown v. Majors*, 2001 WL 1683768 (Tenn. Ct. App. Dec. 19, 2001) (dismissal warranted for failure to list previous lawsuits as required by Tenn. Code. Ann. § 41-21-805).

The record in this case establishes that plaintiff failed to comply with the requirements of Tenn. Code. Ann. § 41-21-805 by failing to list all of his prior lawsuits, the basis for the same, and when and why they were dismissed. We affirm the Trial Court's action in dismissing this case without prejudice.

As a further ground supporting the dismissal, the Trial Court held that the court records filed by the defendant demonstrated that he had failed to pay court costs adjudged against him in some prior lawsuits. Tenn. Code Ann. §41-21-812 states that the court clerk is directed not to accept another claim filed by an inmate who has failed to pay court costs assessed against him in a prior claim. Further, Tenn. Code Ann. §41-21-807(h) states that the court may dismiss any claim if an inmate fails to pay court costs assessed pursuant to the statute. In *Davis v. Holland*, 31 S.W.3d 574 (Tenn. Ct. App. 2000), the Court affirmed the dismissal of an inmate's complaint pursuant to Tenn. Code Ann. §41-21-812 for failure to pay court costs assessed against him in a previous lawsuit found to be malicious and frivolous. In this case, the plaintiff has failed to pay court costs adjudged against him in prior lawsuits dismissed as frivolous, and this is a valid ground for dismissal as found by the Trial Court.

The Judgment of the Trial Court is affirmed and the cause remanded, with the cost of the appeal assessed to Johnny McGowan.

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HERSCHEL PICKENS FRANKS, J.